

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HEALTH  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Health, Office of Vital Records ("State") and Contractor Legal Entity Name ("Contractor"), is for the provision of Electronic Death Registration (EDRS) Implementation Training, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.  
Contractor Place of Incorporation or Organization: Location  
Contractor Edison Registration ID # Number

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed in Attachment 1, EDRS Training Plan and Statement of Work and as detailed below. The Contractor shall meet all service and delivery timelines as specified by this Contract.

A.2. Glossary of Terms.

	Definition
AIRS	Automated Index Retrieval System – Legacy System-This system searches for birth, death, marriage, and divorce certificates that match specified input variables. Birth certification may be printed if all essential items are present for the required record.
EDRS	Electronic Death Registration System – An on-line web-based application for the electronic filing of death records.
EVVE	The EVVE system, owned and operated by NAPHSIS, allows immediate confirmation of the legitimacy of a US birth certificate presented by an applicant to a government office anywhere in the nation. Authorized EVVE users send an electronic query to any participating vital records jurisdiction to either verify the contents of a paper birth certificate or to request an electronic certification instead of the paper birth certificate. An electronic response from the participating vital records jurisdiction either verifies or denies the match with the official records. The EVVE system will also flag responses in which the person matched is actually deceased, an important step that prevents fraud.
JACADA	Vendor name for Legacy System- The system allows a request to the Vital Records Office to be captured and maintained for a period of six months past the date completed. Fees received are noted and balanced for each request. On-line information allows staff to respond to public inquiry. Management reports on fees and activities are produced. Correspondence is generated and recorded for specific cases. It interacts with the AIRS System to produce searches of birth, death, marriage, and divorce records and certificates of birth records. It interfaces with the TVRS (Image Processing System) to search for requested records.
MANTECH	Software Vendor for EDRS- ManTech has been providing Vital Records solutions for 15 years and has an experienced team that understands the Vital Records business. ManTech has a combined experience of more than 50 years in the Vital Records solutions market, and the Vital Records team has participated in multiple Vital Records implementations.

ME	Medical Examiner
NAPHSIS	<p>NAPHSIS is the national nonprofit organization representing the state vital records and public health statistics offices in the United States. Formed in 1933, NAPHSIS brings together more than 250 public health professionals from each state, the five territories, New York City, and the District of Columbia.</p> <p>Working with federal partners such as the Centers for Disease Control and Prevention (CDC), the CDC's National Center for Health Statistics (NCHS), the Social Security Administration, the Department of State, the Department of Homeland Security, and the Office of Personnel Management, NAPHSIS operates electronic systems for vital records offices.</p> <p>NAPHSIS also works with its members, its corporate partners, and NCHS to support the development and use of electronic birth and death registration systems.</p>
STEVE	<p>Births and deaths often occur away from a person's home state. States report public health statistics for all residents, and the federal government provides statistics for the entire nation. For these reasons, vital records jurisdictions must be able to share data with one another, the National Center for Health Statistics, and other authorized data partners.</p> <p>To accomplish this important public health service, NAPHSIS developed the State and Territorial Exchange of Vital Events (STEVE) system. Using STEVE, vital records jurisdictions:</p> <ul style="list-style-type: none"> <li>•Send statistical data to the National Center for Health Statistics for inclusion in the National Vital Statistics System,</li> <li>•Send vital records that pertain to residents in other jurisdictions so the home state's reports include these important data,</li> <li>•Send death information to the jurisdiction of birth so that birth certificates can be flagged as 'deceased,' an important step in preventing fraud and identity theft,</li> <li>•Provide data to authorized data partners for use in authorized public health and administrative purposes.</li> </ul>
TDH	Tennessee Department of Health
TVRS	TN Office of VR Document Mgmt Sys – Legacy System-This is an image processing system used to store, maintain and retrieve the Tennessee vital records (birth, death, marriage and divorce certificates) maintained by the Department of Health. TVRS interfaces with the Vital Records Tracking system and the Automated Index Retrieval System (AIRS) to allow for case entry and closure on Tracking; index searching on AIRS; and retrieval, printing and other maintenance-type activities on TVRS.
VitalChek	Vendor for Funds Processing Service- The system allows the input of orders for vital records services that are received by phone, fax, or Internet and will be charged to a credit card, and enables overnight delivery service when requested.
VRISM	Vital Records Information Systems Management – The database application used to register death records electronically. This system allows for electronic communication between the Tennessee Office of Vital Records and those partners who help to register vital events that occur in Tennessee. The new system will be a web-based, electronic system and will replace the predominantly manual, paper-based process currently in use.
VRVweb®	The MANTECH application that of which VRISM and EDRS are an implementation. Referred to as “VRISM” by most TDH personnel.

### A.3. Training Audience / Session Information.

Funeral Director  (Primary Training audience)	<p>A funeral director, also known as a mortician or undertaker, is a professional involved in the business of funeral rites. These tasks often entail the embalming and burial or cremation of the dead, as well as the planning and arrangement of the actual funeral ceremony. In Tennessee, these professionals are often also small business owners and have a critical role in completing paperwork related to a death.</p> <p>Course options for funeral directors will include in-person instructor led training or webinar. Webinar courses will be limited to approximately twenty-five learners to maintain a controlled environment. Both Central Office and Regional in-person courses will be held at both onsite and offsite locations.</p>
Certifiers/ Other Users  (Primary Training audience)	<p>In Tennessee, the person who provides cause of death information and signs a death certificate are most often credentialed health professionals such as Doctors. They have significant time commitments in their practice, which may be a stand-alone office or part of a medical center.</p> <p>Course options for Certifiers and Other Users will include in-person instructor led training or webinar. Webinar courses will be limited to approximately twenty-five (25) participants to maintain a controlled environment. Both Central Office and Regional in-person courses will be held at both onsite and offsite locations.</p>
Medical Examiners (ME)  (State Trained)	<p>A county medical examiner is a physician appointed by law (Tenn. Code Ann. § 38-7-104) to determine the cause and manner of death of persons who die under specific circumstances as defined by law. Law enforcement officials, physicians, hospitals, funeral directors, and others are required to report to the county medical examiner any death they think might fall under the jurisdiction of the county medical examiner.</p> <p>Course options for MEs will include regional in-person instructor led training or webinar. Webinar courses will be limited to approximately ten (10) MEs to maintain a controlled environment. Regional in-person courses will be held at an offsite location.</p>
Local Registrar  (State Trained)	<p>These are the staff of county health departments who act as the local representative of the Department of Health and also have a variety of other duties depending on their county. They typically assist with the filing and issuance of vital records.</p> <p>Local registrars' trainings will all be regional in-person instructor led training at an offsite location. The maximum number expected at any training is approximately twenty (20).</p>

- A.4. The Tennessee Department of Health (TDH) is implementing the Electronic Death Registration System (EDRS) with the goal of having all end users trained to register deaths electronically in the VRISM system by June 19, 2017. This phase shall include funeral directors, medical examiners, local registrars, health care facilities and medical certifiers. Approximately 6,000 end users need training as part of the initial "Go Live" event beginning in June of 2017.

The vendor supplied trainer(s) shall address identified opportunities, adjust instruction and curriculum based on real-time quality assurance efforts performed by TDH staff or for provision of technical assistance based on individual trainee needs. A weekly report of number of trainees and sessions as well as a final report is required.

The target training audience in the ninety-five (95) counties will be end users in:

- a. Approximately six hundred (600) funeral homes (One (1) to three (3) users per funeral home);

- b. five (5) regional Medical Examiner (ME) offices (average of three (3) per ME office);
- c. Approximately six hundred (600) Local Registrars;
- d. Approximately three hundred (300) licensed health care facilities (to include military, Veterans Affairs and hospice facilities) (average of three (3) per facility); and
- e. Approximately 116 medical centers (as many as 2,600 medical certifiers).

A.5. Utilizing curriculum developed and approved by TDH (developed from provided technical manuals and previous training documents), not less than 5 weeks of training shall occur through instructor-led in-person training and/or webinar. It is envisioned that the selected vendor shall provide 80 training sessions over not less than 20 days of training and a minimum of two trainers with one being a senior level trainer with significant training experience.

The vendor's trainer(s) must be prepared to attend the EDRS software developer supplied one week "Train-the-Trainer" session.

- a. The Funeral Director (and staff) training shall be two (2) to four (4) hours and certifier (typically physicians and their staff) training shall be one (1) to two (2) hours. The first half of the period is content delivery and the second is
- b. Each session shall be supported with 1 Office of Vital Records and/or regional or local subject matter experts provided by TDH. As needed, this may transition to an opening welcome message by a senior TDH leader of not less than director level that is pre-recorded.
- c. Training shall be conducted over at least 4 days per week.
  - (1). At least two locations shall receive on location in-person training each week in the following locations or a within a 50 mile radius: Memphis, Knoxville, Chattanooga, Jackson, Johnson City, Cookeville, Martin, and Savannah, Tennessee. TDH will schedule the facility for these sessions.
  - (2). Sessions may utilize webinar format for a portion of the sessions.
  - (3). As needed, TDH may require the vendor to conduct sessions in Nashville.
  - (4). As needed, TDH may require a portion of the sessions to be conducted after hours or on weekends.

A.6. Data Security.

Death record information is considered sensitive and is protected as confidential data. The vendor supplied trainer will be required to sign a confidentiality statement prior to training.

A.7. Timeline.

Phase 2 will include twenty (20) full non-sequential training days over five (5) weeks to execute training following the one (1) week "Train-the-Trainer" session. The vendor's trainer(s) must be prepared to attend the EDRS software developer supplied "Train-the-Trainer" session as soon as ten (10) calendar days following issuance of the Purchase Order. The vendor must have curriculum complete for review and approval by TDH and be ready to begin training as soon as thirty (30) days following issuance of the Purchase Order or within twenty (20) days of attending the "Train-the-Trainer" session (whichever is sooner). Anticipated date is June 19, 2017.

A.8. Roles and Responsibilities.

Project Team Leader (State Provided)	<ul style="list-style-type: none"> <li>• Develop and refine EDRS Training Plan;</li> <li>• Coordinate EDRS Training Plan execution;</li> <li>• Collaborate with VRISM vendor to ensure the vendor supplied trainer is able to provide a seamless training experience;</li> <li>• Supervise Project Team Staff; and</li> <li>• Act as escalation point with any issues.</li> </ul>
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Project Team Staff (State Provided)	<ul style="list-style-type: none"> <li>• Develop EDRS Training Plan;</li> <li>• Deliver EDRS Training Plan;</li> <li>• Develop and refine EDRS training materials with Trainer;</li> <li>• Supervise EDRS trainers;</li> <li>• Compile Training Evaluation Survey responses;</li> <li>• Participate in training as required; and</li> <li>• Provide the vendor supplied trainer with compliance reports.</li> </ul>
Trainer (Vendor Provided)	<ul style="list-style-type: none"> <li>• Participate in “Train-the-Trainer” Sessions;</li> <li>• Propose updates to EDRS training curriculum, based on feedback and training evaluation surveys, in consultation with Project Team Staff;</li> <li>• Provide assistance to users in order to connect with appropriate support and ensure communication; and</li> <li>• Ensure to the maximum extent users have every effort to receive training and are knowledgeable of resources after training is completed.</li> </ul>
Help Desk (State Provided)	<ul style="list-style-type: none"> <li>• Respond to support questions either over the phone or through email; and</li> <li>• Maintain log of support calls.</li> </ul>
Users (State Identified)	<ul style="list-style-type: none"> <li>• Participate in training as required; and</li> <li>• Utilize the EDRS fully after training.</li> </ul>

#### A.9. Training Sessions.

During the critical “Go Live” event training ramp up beginning in June of 2017, the requirement for statewide training and the number of users will exceed the training capacity of the department. It is envisioned that the selected vendor will provide not less than eighty (80) training sessions (up to) four (4) per day, associated professional quality curriculum, and a senior level trainer with significant training experience for five (5) weeks (at least four (4) days per week). The Funeral Director (and staff) training shall be two (2) to four (4) hours and certifier (typically physicians and their staff) training shall be one (1) to two (2) hours. The first half of the period is content delivery and the second is hands on experience.

Each session shall be supported with one (1) Office of Vital Records and/or regional or local subject matter experts provided by TDH. As needed, this may transition to an opening welcome message by a senior TDH leader of not less than director level that is pre-recorded.

Training shall be conducted over at least 4 days per week.

- At least two locations shall receive on location in-person training each week in the following locations or a within a 50 mile radius: Memphis, Knoxville, Chattanooga, Jackson, Johnson City, Cookeville, Martin, and Savannah, Tennessee. TDH will schedule the facility for these sessions.
- Sessions may utilize webinar format for a portion of the sessions.
- As needed, TDH may require the vendor to conduct sessions in Nashville.
- As needed, TDH may require a portion of the sessions to be conducted after hours or on weekends.

Training sessions will be based on user roles. Each user role will have a required training curriculum, and each role may have overlapping curriculum elements.

#### A.10. Training Materials and Requirements.

- TDH staff will develop the training materials. At a minimum, TDH will produce a student manual and a training presentation. These training materials are the

property of the Tennessee Department of health and will continue to be modified and updated at the Department's discretion.

- b. For all training sessions, the vendor will provide PowerPoint slides and other material to TDH for approval prior to use. TDH will ensure the vendor supplied trainer have access to the VRISM staging environment for use during training. For webinars, TDH will provide training materials in .pdf format. The vendor supplied trainer shall be responsible for providing those .pdf documents to webinar participants at least one day in advance of training.
- c. When a trainer schedules an in-person instructor led course, the vendor supplied trainer shall contact the Project Team Staff to determine the most cost effective and expeditious manner for printing the materials. These will, with few exceptions, be printed by the State of Tennessee or at an authorized vendor.

A.11. Hardware and Software.

The trainer(s) will receive student manuals, a system manual and funeral directors guide during the "Train-the-Trainer" session in printed and electronic format. The trainer(s) shall be responsible for providing a laptop with capability to access the internet, a projector, projector replacement bulbs, and necessary cables and extension cords. The trainer(s) shall also be responsible for providing a phone for their use in communicating with TDH, end users, and other stakeholders.

A.12. Skills.

The trainer shall meet the following qualifications:

- a. At least five (5) years of training curriculum development and delivery including both web-based and instructor led curriculum;
- b. At least two (2) years of training delivery experience within information technology projects or delivery of training via technology (using Adobe, Cisco, etc.);
- c. Experience in broad geographic regional training delivery and technology solutions; and
- d. Each trainer shall also possess the ability to travel to locations throughout Tennessee, including some areas not served by public transportation. Overnight travel will be required at the expense of the vendor.

- A.13. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this

Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.14. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on June 1, 2017 ("Effective Date") and extend for a period of thirteen (13) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount (\$Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Training Materials	\$ Number
Training Session or Webinar	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Dwayne K. Evans  
 Administrative Services Manager  
 Andrew Johnson Tower, 2<sup>nd</sup> Floor  
 710 James Robertson Parkway  
 Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
    - (1) Invoice number (assigned by the Contractor);
    - (2) Invoice date;
    - (3) Contract number (assigned by the State);
    - (4) Customer account name: Tennessee Department of Health, Office of Vital Records;
    - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
    - (6) Contractor name;
    - (7) Contractor Tennessee Edison registration ID number;
    - (8) Contractor contact for invoice questions (name, phone, or email);
    - (9) Contractor remittance address;
    - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
    - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
    - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
    - (13) Amount due for each compensable unit of good or service; and
    - (14) Total amount due for the invoice period.
  - b. Contractor's invoices shall:
    - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
    - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
    - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
    - (4) Include shipping or delivery charges only as authorized in this Contract.
  - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Lori Ferranti, PhD, MSN, MBA, RN  
 Assistant Commissioner  
 State of Tennessee, Department of Health  
 2<sup>nd</sup> Floor, Andrew Johnson Tower  
 710 James Robertson Parkway  
 Nashville, TN 37243  
 lori.ferranti@tn.gov  
 Telephone # 615-253-6814  
 FAX # 615-253-5187

The Contractor:

Contractor Contact Name & Title  
 Contractor Name  
 Address  
 Email Address  
 Telephone # Number  
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the

state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 2, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party

to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
- The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.
- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar

cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below),
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and

f. the Contractor's response seeking this Contract.

- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

## **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.4. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.5. Ownership of Software and Work Products.
- a. Definitions.
    - (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
    - (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
    - (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
    - (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
    - (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created,

designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software.

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
  - (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
  - (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**TENNESSEE DEPARTMENT OF HEALTH:**

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**JOHN J. DREYZEHNER, MD, MPH, FACOEM, COMMISSIONER**

**DATE**

**ATTACHMENT 2****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**